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THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 July 1998]

1. The International Federation of Human Rights Leagues (IFHR) considers questions relating to the administration of justice and human rights, which fall under item 9 of the provisional agenda of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to be of vital importance.

2. Following a mission to Casamance from 3 to 12 February 1998, IFHR observed that despite the Senegalese Government's expressed commitment to the promotion and protection of human rights, instances of human rights violations are regularly reported in Senegal, particularly as regards the administration of justice.

3. The situation is particularly disturbing in Casamance, where the Mouvement des forces démocratiques de la Casamance (MFDC) has been engaged in conflict with the Senegalese army since 1990. Several problems have prevented a solution of the underlying situation, of which IFHR has identified three:

- The problem of land: the nationalization of land in 1960 and the recent migration of northern Senegalese who have received plots of land have bred a feeling of dispossession among the farmers of Casamance;

- The problem of regionalization: despite an expressed commitment to greater regional autonomy, the situation is quite different. An effective regionalization plan would eliminate one of the grounds for the rebellion;

- The problem of the army: many civilian authorities are former military leaders (the Minister of the Interior, for example, is a former Chief of Staff). This situation strengthens the legal protection afforded to the army.

4. The conflict has led to a human rights crisis in a number of areas. IFHR has focused its attention on violations committed against the civilian population, on the problem of refugees and displaced persons, and on judicial issues.

Violations committed against the population

5. Violations that affect the population are committed by both parties to the conflict (army and rebels). However, the MFDC leadership has been more open in claiming responsibility for such acts than have the government authorities. The latter in fact appear to deny the existence of such acts, citing a lack of evidence. However, instances of extrajudicial killings, arbitrary arrests, torture and disappearances were brought to the attention of the IFHR mission.

6. Early in August 1997 at least seven persons were arbitrarily arrested. Three other persons were abducted at the end of the same month; their fate is still unknown. Several cases of torture (at the department of Bignona

military camp and at the School for Agricultural Technology) were reported to IFHR. In addition, during the night of 4 September 1997 near Ziguinchor, the Senegalese army fired randomly in all directions, causing much damage to the villagers' property.

7. These acts committed by the Senegalese army or police contravene various treaties ratified by Senegal: article 9 of the International Covenant on Civil and Political Rights (ratified by Senegal in 1978) condemns arbitrary detention. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by Senegal in 1987) maintains that all acts of torture are offences under the law. The repeated violation of these instruments was noted earlier by the Committee against Torture at its 246th and 247th meetings, held on 1 May 1996. Disturbed by the numerous cases of torture brought to its attention, the Committee recalled that "a democracy must, whatever the circumstances, ensure that only legitimate means are used to protect the security of the State, peace and stability" (A/51/44, para. 111). The Human Rights Committee, following its meetings on 21 and 22 October 1997, recommended that "measures be taken to ensure the full observance of articles 6 and 7 by military personnel and police, and the effective implementation in practice of article 7 of the Covenant vis-à-vis people suspected of being MFDC sympathizers" (CCPR/C/79/Add.82, para. 11).

8. IFHR notes that, despite the recent recommendations of the Committee against Torture and the Human Rights Committee, further acts have been committed which negatively affect the civilian population.

9. The appearance of anti-personnel mines during the summer of 1997 is another source of concern. The IFHR mission noted that although the mines were placed by both the Senegalese army and members of MFDC, the rebel movement acknowledges its guilt in this respect, while the Senegalese Government denies all responsibility. The Minister of Justice has informed IFHR that Senegal intends to ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction.

The situation of civilian refugees and displaced persons

10. There are many residents of Casamance who, fleeing the fighting, have taken refuge in the Gambia (an estimated 4,000 persons) or in Guinea-Bissau (between 15,000 and 17,000). Their situation is dire: the Senegalese army is taking punitive action against those suspected of sympathizing with the rebels. These people are also being harassed by members of MFDC, who demand that they join the movement. The civilian population is thus held hostage, a situation which IFHR strongly condemns. The Gambia, Guinea-Bissau and Senegal have jointly decided to move the refugee camps, but the parties have yet to agree on an appropriate site.

The status of justice

11. The judicial situation is disturbing in several respects. The IFHR mission was particularly interested in the alleged judicial proceedings against the army. The mission concluded from its observations that judicial proceedings are structured in such a way that it is virtually impossible to

bring a complaint against the army. If a victim brings a complaint against one or more soldiers, the court can rule it admissible, but it cannot initiate proceedings until the competent military authorities have given their consent which they seldom do. And, the prosecutor in Ziguinchor, who has the authority to rule on the appropriateness of initiating proceedings, has never ordered a preliminary investigation.

12. Moreover, certain rules of procedure derogate from ordinary law, such as the requirement that the examining magristrate must issue a detention warrant if the court so requires, or the fact that a request to go forward can be ruled inadmissibly if the prosecutor opposes it. There have been reports of proceedings based solely on preliminary investigations in which the defence was not allowed to confront the accusers. Taking note of this situation, the Committee against Torture, following its meetings on 1 May 1996, recommended to Senegal that "any person accused of an offence under criminal law should be subject to an objective investigation ..." (A/51/44, para. 116).

13. The Federation's attention was also drawn to the problem of detained persons. On 10 February 1998, some 79 persons who had been detained on suspicion of belonging to MFDC were being held in the Ziguinchor prison, with an equal number held in the Dakar prison. None of these individuals had been sentenced, and the one who had been there longest had been held since March 1995. IFHR wishes to point out that the situation of detainees suspected of attempting to undermine the State is a recurring problem in Senegal. The Committee against Torture recommended to Senegal that, in the event that an individual's responsibility for an offence under criminal law was established, that person should be "handed over to the competent authority as soon as possible" (ibid.).

14. The Human Rights Committee noted in its concluding observations that "the criteria enabling a judge to hold an arrested person in pre-trial detention are not defined under the law". The Committee recommended that the State party should "set out in its Code of Criminal Procedure criteria establishing grounds on which persons awaiting trial may be held in detention which are in conformity with article 9 (3) of the Covenant". Furthermore, the Committee recommended "the repeal of provisions dealing with special detention in cases of offences against the security of the State, or the provision of further legal safeguards in such cases" (CCPR/C/79/Add.82, para. 14). It is clear to IFHR that, given the situation in Casamance, those recommendations have not been effectively followed up.

15. The IFHR mission also found that the situation of persons held in prison was still disturbing. The mission visited the prison in Ziguinchor, where 303 persons, including 23 women, were being held even though budgetary provisions had been made for only 225 prisoners. IFHR would like to recall here the recommendations made by the Human Rights Committee in its conclusions of 19 November 1997: "The Committee recommends that measures be taken to reduce overcrowding and to upgrade prison facilities as quickly as possible" (ibid., para. 15).

16. In the light of the issues raised here, IFHR:

(a) Invites the Senegalese Government to determine who is actually responsible for the violations perpetrated against the civilian population by the armed forces operating in Casamance and to institute any judicial proceedings that may be warranted;

(b) Invites the judicial authorities scrupulously to comply with the procedures in force, which are the only guarantees of individual freedoms;

(c) Invites the Senegalese Government to strengthen the independence of the judiciary and to reform the procedure for dealing with attempts to undermine State security with a view to guaranteeing citizens the same rights they enjoy with regard to crimes and offences under ordinary law;

(d) Invites the Government to ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction;

(e) Invites the Government to create conditions that are genuinely conducive to a dialogue with a view to restoring peace in Casamance;

(f) Invites the MFDC leadership to refrain from using anti-personnel mines and to halt all murderous activity directed against the civilian population.